

# **Preparing for Your Administrative Pesticide Penalty Hearing**

You have an opportunity to be heard at an administrative hearing regarding alleged violations pertaining to unlawful pesticide use. At the hearing, you will have an opportunity to present evidence and testimony to refute the violation(s) presented in the Notice of Proposed Action.

Your hearing will be held before a Hearing Officer who will make a decision based upon evidence and testimony presented at the hearing. The role of the Hearing Officer is to determine if the violation(s) occurred and whether the penalty should be reduced or kept at the proposed level.

The hearing is your opportunity to come and present your evidence and testimony. You can review all the evidence of the County Agricultural Commissioner (Commissioner) before the hearing. The Hearing Officer will evaluate testimony and evidence for its credibility and relevance at the hearing. Additional evidence and testimony cannot be introduced after the hearing has concluded.

## **Who's Who**

The Department of Pesticide Regulation (DPR) regulates all aspects of pesticide use, sales and manufacturing in California.

The Commissioner is responsible for enforcing the laws and regulations pertaining to pesticide use within the County.

An advocate assigned by the Commissioner will present the case for the County.

The Hearing Officer will write a decision. The Hearing Officer is a person chosen by the Commissioner to hear the case fairly, impartially, and without bias.

The Respondent is the person and/or business charged with the violation(s). The Respondent:

- Is entitled to review the evidence.
- Is entitled to hear the evidence that is the basis for any fine or penalty action.
- Is entitled to question witnesses on relevant matters.
- Is entitled to present evidence on his/her behalf.
- Is entitled to full and fair consideration of relevant evidence by an impartial hearing officer.
- Is entitled to an appeal if he/she participates in the hearing.
- May represent him/herself or be represented by an attorney, a family member, or an officer or employee of the Respondent at the hearing.

## **The Hearing Process**

Formal hearing provisions of Administrative Procedure Act, Chapter 5, (Government Code sections 11500-11529) do not apply to this hearing.

During the hearing, testimony and evidence is taken on violations not admitted to in the pre-hearing conference. Clearly state why the evidence you present is relevant.

## **The Pre-Hearing Conference**

At the request of the Respondent or County, immediately before the hearing, you have an opportunity to meet with the County. At this time, you may be able to agree on specific facts concerning all or part of your case. The pre-hearing conference generally will proceed as follows:

- Introductions and filling out the “Sign-in” or “Appearance” sheet.
- You and the County discuss the violations in the Notice of Proposed Action.
- Violations you acknowledge occurred can be agreed to (stipulated) and included as part of the hearing record.
- Bring any evidence you have to support your case. Evidence is testimony, writings, material objects, or other things that are offered to prove the existence or nonexistence of a fact. Examples of evidence include documents such as pesticide labels, invoices, correspondence, sales records, and photographs. Please bring three copies of any document.
- To simplify the hearing process, Respondent and the County can “stipulate” or “agree” to facts and the relevance and authenticity of evidence.
- The Pre-Hearing Conference is for parties to the action. It is not open to the public or non-party witnesses who will testify at the hearing.

The recording of the hearing and any documents submitted to the Hearing Officer constitute the official record of the hearing.

## **The Hearing Begins**

The Hearing Officer will open the hearing and turn on the recording device.

- The Hearing Officer’s recording of the hearing and documents submitted constitutes the record of the hearing.
- The Hearing Officer will state the date and time.
- All persons present will identify themselves and spell their names for the record.
- If applicable, the Hearing Officer states, “Prior to the hearing, a pre-hearing conference was held and the parties stipulated to the following .... do all parties agree?”

## **Opening Statements**

An opening statement is a summary of what you intend to show or prove. An opening statement is optional. The County will make their opening statement first, followed by the Respondent.

## **Presentation of Testimony and Evidence**

Since the County has the burden of proving its case, the County presents its case first. The hearing begins with the County's advocate presenting his or her evidence and calling any witnesses. You are allowed to question the County's witnesses. After the County's presentation of evidence and witnesses, you may present your evidence and witnesses. The County's advocate can question your witnesses. Throughout this process, the Hearing Officer may question any witnesses to clarify points.

## **Closing Statements**

A closing statement summarizes the evidence you presented to support your case. Your closing statement should be brief and direct. At the close, the Hearing Officer should be told exactly what you are requesting. As before, the County's statement is heard first, followed by the Respondent's statement. A closing statement is optional.

## **The Hearing is Closed**

## **The Notice of Decision**

If the Hearing Officer is the Commissioner, he or she will send you a copy of his or her decision within approximately 30 days.

If the Hearing Officer is a person designated by the Commissioner, the Hearing Officer will submit a Proposed Decision in writing to the County Agricultural Commissioner. The Commissioner will review and adopt or not adopt the Proposed Decision. You will receive a copy of the Commissioner's Notice of Decision and Order within approximately 45 days.

## **Appeals**

If you request a hearing and do not appear, the Hearing Officer will base the decision on the County's evidence only; you will forfeit your right to an appeal.

If you request and appear at the hearing, the Commissioner's Decision and Order will inform you of appeal procedures.

## **The Evidence**

Call the County to make an appointment to see the evidence if they do not transmit a copy to you at the time you are notified of the hearing date.

## **Hearing Dates and Changes**

If you have any questions about your hearing date or time, please call the County.

Any changes to your hearing date must be requested in writing and received by the County five days before your hearing date, except in cases of emergency.

## **Accessibility of the Hearing Location**

Hearing locations must be accessible to persons with disabilities. If you have special needs that require reasonable accommodation, advise the County in advance to assure accessibility.

## **Other Hearing Details**

Administrative pesticide penalty hearings are authorized by Food and Agricultural Code section 12999.5 and Business and Professions Code section 8617. The Notice of Proposed Action will identify the authorizing statute for the hearing.

- The hearing will not be transcribed by a court reporter. If you wish, you may make your own arrangements to have a court reporter present at your expense.
- You must notify the County five days before the hearing if you have arranged for a court reporter.
- The Hearing Officer will administer an oath to all witnesses.
- The Hearing Officer will keep any items submitted as evidence until the case is final and any appeal has been resolved.
- The hearing process is informal and may vary at the Hearing Officer's discretion.

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